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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 121

ERNEST NEWTON KALB, *Appellant,*

vs.

ROSCOE R. LUCE, HENRY FEUERSTEIN, HELEN FEUERSTEIN AND GEORGE O'BRIEN, *Respondents.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

BRIEF OF THE RESPONDENTS

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HAMMERSMITH-KORTMEYER CO., MILWAUKEE

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BRIEF OF THE RESPONDENTS

NATURE OF CASE

Appellant has correctly stated the nature of the case but therein makes the following misstatement: "Both of these cases (Case No. 120 and 121) arose from the same facts and transactions. Both involve the same question of law and the decision in one must necessarily govern the decision in the other."

Case No. 120 is an action in equity to recover possession of the farm and to annul and cancel the Sheriff's deed.

Case No. 121 is a suit at law in tort for damages against the County Judge, Roscoe R. Luce, and the

Sheriff, George O'Brien, and the plaintiffs in the foreclosure suit Henry and Helen Feuerstein, for action taken by them respectively in the foreclosure suit.

It is one thing to hold that the decision made by County Judge Luce in the foreclosure action was erroneous and that the Sheriff's deed was void. It is quite another to say that as a result thereof the Judge who made the erroneous decision, and the Sheriff who executed the Writ of Assistance delivered to him pursuant to the Court's order, or even the litigants who were merely seeking their legal rights, are liable in tort for damages by reason thereof.

It is submitted that it is apparent that both do not involve the same question of law and that the decision in one case does not necessarily govern the decision in the other.

OPINION BELOW

It should be added, in addition to the statement contained in appellant's brief and in explanation of the decision and direction for further proceedings by the Supreme Court of Wisconsin in its decision on the appeal from the demurrers as set forth on pages 10 to 13 of the transcript, that the trial court had overruled the demurrer of the defendant, Sheriff O'Brien, as to the second cause of action alleging assault and battery. The Supreme Court, on motion for review by the defendant, George O'Brien, on that appeal, decided that the allegations of appellant's complaint as to the second cause of action were insufficient in that it failed to allege that O'Brien used any excessive force or that he used more force than was reasonably necessary. The

trial court on this score was reversed with directions to sustain the demurrer, but with leave to the appellant to file an amended complaint within twenty days. No amended complaint was served by appellant as permitted by the orders (R. 9, 17 and 18) and judgment was entered against the appellant on each cause of action in favor of all defendants. (R. 18)

JURISDICTION

A statement opposing jurisdiction and a motion to dismiss or affirm was made in which it is contended that ample, independent, non-Federal grounds support the State Court decision and that this appeal should, therefore, be dismissed.

STATEMENT OF THE CASE

In this connection we desire only to point out counsel's misstatements appearing on pages 4, 5, and 6 of their brief to the effect that the foreclosure proceedings were begun in the *Circuit* Court of Walworth County. The foreclosure proceedings were entirely in the *County* Court of Walworth County. The suit at bar for damages is brought in the Circuit Court. Hence, we have here a case where it is attempted to have the Circuit Court collaterally attack or question a decision of the County Court.

Counsel state that the order confirming the sale on September 16, 1935, was without notice to the appellant although the laws of Wisconsin require notice. This is not a fair statement. The notice of motion to confirm the Sheriff's report of sale was given as required by statute. This was to be heard September 9.

The Court deferred ruling and continued the matter to September 16. Whether it was in fact adjourned to a day certain or the Court merely deferred ruling by taking the matter under advisement, is wholly immaterial.

QUESTIONS INVOLVED

In addition to the sole issue claimed to be involved by appellant, namely, whether the stay provided by Subsec. (n) of Sec. 203, Title 11, U.S.C.A. is self-executing, there are also involved the following issues or questions which counsel have failed to state or discuss:

1. Should the motion to dismiss for want of a substantial federal question or, in the alternative, to affirm be granted because independent and adequate non-Federal grounds support the State Court decision?

2. A. Is not the respondent, Hon. Roscoe R. Luce, County Judge, who acted in his official capacity, immune from liability even if error was committed where facts were present which had either legal value or *color* of legal value even though it be subsequently held he had no jurisdiction?

B. Is not Sheriff George O'Brien immune from liability in executing the Writ of Assistance which was fair on its face where it is not alleged that he had knowledge of want of jurisdiction?

C. Are not the litigants, Henry and Helen Feuerstein, free from liability in tort where they merely sought to obtain their legal rights?

3. Can this suit in the Circuit Court of Walworth County for damages be maintained as a collateral

attack upon the orders of the County Court of Walworth County?

4. Does not the Full Faith and Credit Clause of the Federal Constitution require that this Court recognize the validity of the Wisconsin Supreme Court's decision in so far as it is based on non-Federal grounds and, likewise, the validity of the foreclosure sale and proceedings in the County Court?

5. Does not the complaint affirmatively disclose a lack of good faith on the part of the appellant in the bankruptcy proceedings and a failure to comply with the provisions of Sec. 75 and result in an abandonment of those proceedings?

6. Were not the demurrers correctly sustained as to the second and third causes of action for the reasons that the allegations are insufficient under Wisconsin law,

A. In that the second cause of action fails to allege that Judge Luce and Henry and Helen Feuerstein were present or that they aided or abetted the Sheriff and because it fails to allege that they *intended* to cause the Sheriff to commit an assault and battery?

B. In that the third cause of action fails to connect Judge Luce and Henry and Helen Feuerstein with the alleged false imprisonment and in that it fails to allege in what respect the restraint was illegal?

ARGUMENT

I.

THE MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION OR, IN THE ALTERNATIVE, TO AFFIRM SHOULD BE GRANTED BECAUSE INDEPENDENT AND ADEQUATE NON-FEDERAL GROUNDS SUPPORT THE STATE COURT DECISION

In accordance with the rules of this Court, motion was made by the respondents herein to dismiss the appeal or to affirm the lower Court on the ground that no substantial Federal question was presented.

On October 9, 1939, this Court ordered that "Further consideration of the question of the jurisdiction of this Court and of the motions to dismiss or affirm is postponed to the hearing of the cases on the merits."

The arguments hereinafter made in general in opposition to the appellant's contentions apply with equal force to respondents' motion to dismiss for want of a Federal question or, in the alternative, to affirm and are not here repeated but reference thereto is made.

While the Supreme Court of the State of Wisconsin in its original decision discussed the application of the Frazier-Lemke Act, as amended, to mortgage foreclosures in Wisconsin courts (see R. 10, 11, 12, 13), it nevertheless held upon non-Federal grounds that the complaint did not state a cause of action against the defendant, O'Brien (Sheriff).

But upon the appellant's motion for rehearing the Wisconsin Supreme Court eliminated the Federal ques-

tion entirely, (R. 14, 15, 16) and decided the case upon other and non-Federal grounds. Mr. Chief Justice Rosenberry, speaking for the Court said:

> "All that this court is called upon to do is to determine whether or not the order of confirmation was valid and that depends upon whether the county court for Walworth county had jurisdiction to make the determination. If it should be held that the mere filing of the petition divested the state court of jurisdiction the whole matter would be thrown into inextricable confusion. No one would know whether a judgment of foreclosure of a state court with an order confirming a sale thereunder was valid or void until a search had been made of the records of the federal courts.
>
> We need not consider nor discuss the question whether the congress has power to divest the jurisdiction of a state court which has once attached. That question is not presented by this record. It would seem from a consideration of Sec. 75 as amended that the filing of the petition automatically operated to extend the period of redemption. It is possible that that state of facts if made to appear would make the order of the trial court erroneous but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit court is void."

Counsel for respondents respectfully submit that only one conclusion can be drawn from the language above set forth and that conclusion is that the Wisconsin Supreme Court sustained the lower court upon the theory that the judgment and orders of the County Court, even though erroneous, were within the power

of that court to make and could only be questioned by appeal to the proper appellate tribunal.

We have fully discussed the question of collateral attack elsewhere in our brief and will not repeat our argument here. Suffice it to say that as an elementary proposition, a judgment entered by a court having jurisdiction of cases of the kind and class of that adjudged, cannot be collaterally attacked.

The rule is well established that where the decision of the state court is deemed to rest upon a non-Federal ground which independently and adequately supports the state court judgment, the United States Supreme Court will not exercise jurisdiction to review, notwithstanding the raising of federal questions upon the state court record or the decision of those questions by the state court. Where such an independent and adequate non-Federal ground of decision appears, review may not be had in the Supreme Court even though the state court *also in terms purports to decide a federal question, and decides it erroneously.*

Applying the above rule to the case at bar, it seems clear to us that even though the Supreme Court of Wisconsin discussed the application and validity of the Frazier-Lemke Act, still the case is not entitled to review by this tribunal for the reason that there are ample non-Federal grounds upon which the judgment of the state court may, and in fact must, be sustained.

Even though all of the contentions of the appellant with regard to the Frazier-Lemke Act be sustained, the remanding of the case to the State Court for further proceedings would be useless and profitless for the State Court could thereafter enter the same judgment upon the non-Federal grounds alone.

The questions of collateral attack, judicial immunity, immunity of an officer while enforcing a writ valid on its face, immunity of a litigant for merely seeking the enforcement of his legal rights are all purely non-Federal questions and are not proper matters for review by this Court. And this is true even though the State Court discussed, and as it is claimed, erroneously decided a question relating to a Federal statute.

In the case of *Enterprise Irrigation District vs. Farmers Mutual Canal Company,* 243 U. S. 157, 164; 37 S. Ct. 318, 61 L. Ed. 644, the state court decided in favor of the respondent upon two grounds, first, that the 14th amendment relating to "due process and equal protection" had not been violated, and second, that the defense of estoppel in pais was well grounded.

This court said:

> "The first was plainly a Federal question and the other was plainly non-Federal. Both were resolved in favor of the Canal Company * * * Thus we are concerned with a judgment placed upon two grounds, one involving a Federal question and the other not. *In such situations our jurisdiction is tested by inquiring whether the non-Federal ground is independent of the other and broad enough to sustain the judgment.* Where this is the case, the judgment does not depend upon the decision of any Federal question and we have no power to disturb it. (Italics ours).

To the same effect are the following cases: *Hammond v. Johnson,* 142 U. S. 73; 35 L. Ed. 941, 12 S. Ct. 141. *Eustis v. Bolles,* 150 U. S. 361, 37 L. Ed. 1111, 14 S. Ct. 131.

It seems to us obvious from the whole record that the State Court reached its ultimate conclusions upon the principal ground that the orders of the County Court could not be attacked collaterally.

In any event it is clear from the record that the State Court could and doubtless would, if the case were remanded, rule against the appellant on that and other non-Federal grounds. Sufficient reasons therefore exist for either dismissal or affirmance by this Court.

In *Murdock v. Memphis,* 20 Wall. 590, 634, 635; 22 L. Ed. 429, this Court said:

> "But when we find that the State Court has decided the federal question erroneously, then to prevent a useless and profitless reversal, which can do the plaintiff in error no good, and can only embarrass and delay the defendant, we must so far look into the remainder of the record so as to see whether the decision of the federal question alone is sufficient to dispose of the case, or to require its reversal; or on the other hand, whether there exist other matters in the record actually decided by the State Court which are sufficient to maintain the judgment of that Court, notwithstanding the error in deciding the federal question. In the latter case the court would not be justified in reversing the judgment of the State Court."

In view of the fact that the record establishes ample non-Federal grounds upon which the State Court could and did decide the case adversely to the appellant, respondents' motion to dismiss or affirm, should we respectfully submit, be granted.

II.

DEMURRER ADMITS ONLY FACTS WELL PLEADED

Throughout the various causes of action, appear such language as "arbitrarily, wrongfully and unlawfully," and "while the exclusive jurisdiction of the person of the

plaintiff and of all of his property, both real and personal, was in the United States District Court," and "the acts * * * were done and performed in collusion."

This language and these allegations are but conclusions of law, are not well pleaded, and are not admitted by demurrer.

Aaron v. Wausau, 98 Wis. 595.
Coughlin v. Milwaukee, 227 Wis. 357.
49 C. J. 438.

III.

IMMUNITY. JUDGE ROSCOE R. LUCE WHO ACTED IN HIS JUDICIAL CAPACITY, SHERIFF GEORGE O'BRIEN WHO ACTED IN HIS OFFICIAL CAPACITY, AND LITIGANTS HENRY AND HELEN FEUERSTEIN WHO MERELY SOUGHT LEGAL RIGHTS, ARE IMMUNE FROM LIABILITY FOR DAMAGES

A. Complaint discloses defendant, Honorable Roscoe R. Luce, County Judge, acted in his judicial capacity and no cause of action is stated against him as he is immune from diability even if error is committed where facts are present which have either legal value or color of legal value, though it be subsequently held he had no jurisdiction.

As stated by the Trial Court:

"This complaint * * * is so framed that its allegations as far as the defendant Roscoe R. Luce is concerned, shows that what he did was done in his judicial capacity as county judge * * * ."

Appellant argues that the exclusive jurisdiction over him and his property on September 16, 1935, was in the Bankruptcy Court and that the respondent, Judge Luce, by erroneously deciding, as his minutes on that day show, "Court holds Federal Act inapplicable where sale has been had," that he thereupon became a trespasser and liable to the plaintiff for signing judicial orders, pursuant to which he was removed from his farm.

The mere statement of this proposition seems to refute it. How can there be any fearless, independent judiciary, how could our democratic form of government succeed, if a Court, in every case where a question of jurisdiction is involved, must be subjected to the fear and constant danger of having his decision challenged and made a defendant in a damage suit by the disappointed litigant? By the same reasoning, the several judges of the Supreme Court of Wisconsin would likewise be liable to appellant if they erroneously decided a question of jurisdiction adverse to him which might later be reversed by the Supreme Court of the United States.

Questions of jurisdiction are frequently difficult; decisions thereon are often conflicting and by divided Courts; many of the questions presented are extremely close, border-line cases. They are often raised by the ablest legal talent and are argued with a degree of persuasiveness that oft-times baffle the keenest minds of the judges. Judges are human and however great may be their learning, their industry and their zeal to ascertain and determine the truth, their logic and the conclusions derived therefrom are not always sound.

Public policy of necessity requires judicial immunity from damage suits. This rule is the bulwark of all jurisprudence, and is firmly fixed as the law of this state.

For instance in this case, as pointed out in the note in 99 A.L.R., page 1400,

> "the necessary steps to effect a stay of proceedings under the Statutes, especially the instance mentioned in Subsec. n and o has been somewhat in doubt and the question remains a troublesome one. The view seems to have been taken in some cases that the Statute is self executing, * * * while others seemed inclined to take the view that only specific order, upon application made, will a Bankruptcy Court's power or the provisions of the Statute be brought into play to interfere with the machinery of State Tribunal or officers * * * ."

There is no dispute that the County Court of Walworth County has civil jurisdiction of the foreclosure proceedings there instituted. For the purposes here in question, it has concurrent jurisdiction with our circuit courts which are our courts of general jurisdiction under our constitution, Chapter 234, Laws of Wis. 1907. (Appendix 1). A judgment had been issued and every court has the power to enforce its own judgment.

Judge Luce's decision holding that the Frazier-Lemke Act was inapplicable to the case before him, since the sale had been held and deed delivered, was supported by the rulings of several Federal cases among which are: *In Re Tabor,* 11 F. Supp. 555; *In Re Arend,* 8 F. Supp. 211; *In Re Klein,* 9 F. Supp. 57; *In Re Chaboya,* 9 F. Supp. 174. See also *La Fayette v. Lowman,* 79 F. (2d) 887; *U. S. National Bank v. Pamp,* 83 F. (2d) 493.

In view of that fact it was not only the right but the duty of Judge Luce to determine whether or not that law suspended the power of the County Court of Walworth County to enforce its judgment.

As was said in *State v. Sawyer,* 113 Me., 458; L.R.A. 1915 F. 1031; 11 Am. Jur. 103,—

> "If before the constitutionality of an act of Congress has been decided by the Federal Supreme Court, 'the enforcement of a state law depends upon whether Congress had power under the Constitution to pass an act the effect of which is to suspend the state law, then it becomes the duty of the state court to act in accordance with its own decision of that question until such time at least as it may be otherwise finally determined by the supreme tribunal'."

On this question, we contend that the decisions of our State Court are controlling though they are in conformity with the general rule which obtains in the Federal jurisdiction.

In *Robertson vs. Parker,* 99 Wis. 653, it is held that a judge, who acts wholly without jurisdiction and wilfully, maliciously or corruptly, might be liable for such action. This rule was modified in *Wasserman vs. Kenosha,* 217 Wis. 223, and it is now the law of this State that:

> "a Judge is not liable even though he act maliciously."

In the Robertson case, the Court says:

> "It requires no argument to show that the doctrine of judicial immunity is absolutely essential to the very existence of the judicial office * * * Grove Van Duyn, 44 N. J. Law 654, is a case in which these questions are discussed with great learning and ability. Beasley, C. J. thus announces the rule. *'When the Judge is called upon by the facts before him to decide whether his authority extends over the matter, such an act is a jurisdictional act, and such officer is not liable, in a suit, to the person affected by his decision, whether such decision be*

right or wrong. But when no facts are present, or only such facts as have neither legal value nor color of legal value in the affair, then, in that event, for the magistrate to take jurisdiction is not, in any manner, the performance of a judicial act, but simply the commission of a judicial wrong * * * Such protection is necessary to the independence and usefulness of the officer.'"

A case which is particularly in point is *Langen v. Borkowski,* 188 Wis. 277, 206 N.W. 181. It was an action to recover damages for false imprisonment against the Circuit Judge, the sheriff and the Clerk of Court. The Court there said:

"The circuit court is a court of general jurisdiction. In the performance of his duties, the judge of such a court is constantly engaged in deciding the various issues presented upon a trial, questions of pleading and practice, the admissibility or non-admissibility of evidence, the decision of cases, the nature and extent of his jurisdiction, and the question of whether in a given case or proceeding he has jurisdiction either of the subject matter or of the person, or both. *Where facts are present which have either legal value or color of legal value, he is immune from liability for error committed, even though it be subsequently held that as a matter of law he had no jurisdiction whatsoever of the matter.*" (Italics ours)

The Court further says, quoting approvingly from 11 R.C.L. 813:

"But if he (the court) has jurisdiction to issue process of the kind in question, and if the facts and papers on which he acts are such as to make it a matter for his judicial decision whether he should or should not issue the process in the particular case, he is not personally liable for any imprisonment which may result from his decision,

though it is afterward held it is erroneous, and even though the error may be held to be one of jurisdiction."

The rule is otherwise stated:

"That a judicial officer is not liable when the arrest or detention is in a case belonging to a class over which he has cognizance, and is by complaint or other proceedings put at least colorably under his jurisdiction."

25 C. J. 515.

See to the same effect:

Adair v. Bank of Am. Nat. T. & Sav. Asso., 303 U. S. 350 (at page 358 and cases there cited); 82 L. Ed. 889; 58 S. Ct. Rep. 594.

Bradley v. Fisher, 13 Wall. 335.

Carter vs. Dow, 16 Wis. 317.

33 C. J. 981.

15 R.C.L. 543.

As was said in *Land, Log and Lumber Co. vs. McIntyre*, 100 Wis. 258:

"Such rule (Judicial Immunity) applies to all officers in the performance of judicial or quasi judicial duties, to Judges from the highest to the lowest • • • ; and further, in substance, that if it were otherwise, officers, however conscientious and correct in their official life, would be constantly in danger of having their actions challenged in court by disappointed persons and that independence necessary to judicial functions seriously interfered with."

Wasserman vs. City Kenosha, 217 Wis. 223.

See also note in *13 A. L. R.* 1344.

We submit that under the direct authority of these decisions, there can be no liability predicated against the defendant, Judge Luce, who obviously acted throughout in his judicial capacity.

B. Sheriff George O'Brien is immune from liability in executing the Writ of Assistance which was fair on its face as it is not alleged that he had knowledge of any want of jurisdiction.

It fairly appears from the complaint that whatever the defendant, Sheriff George O'Brien, did was done pursuant to his official duty as sherif in the execution of the Writ of Assistance which was issued out of the County Court and directed that he place the plaintiff, Feuerstein, in the foreclosure action, in the possession of the premises. The Writ of Assistance in question was in the usual form and fair on its face. There is no allegation to the contrary and this is the presumption of law. The County Court of Walworth County had authority and jurisdiction to issue Writs of Assistance. The power of the Court had not been stayed. It was the duty of the sheriff to take the force of the county, if necessary, to execute the Writ and he would have been liable to the plaintiff in the foreclosure action in damages if he had failed to execute it. It is true that the sheriff used force, but the Writ so commanded him, if necessary. There is no allegation in the complaint that the use of force was not necessary or that he used more force than was necessary.

We contend that whether the sheriff is entitled to immunity in executing a Writ fair on its face issued out of the State Court must be determined by the laws of the State of Wisconsin.

The sheriff is immune from liability in executing a Writ valid on its face where he has no knowledge of the lack of jurisdiction of the court issuing the same, as appears from the following cases:

"The officer to whom a search warrant is given is not charged with the duty of passing upon its sufficiency, the warrant constituting a complete protection to the officer executing it, even where the magistrate acts without jurisdiction, provided the officer has no knowledge of such want of jurisdiction."

Chruscicki vs. Hinrichs, 197 Wis. 78.

"As to the constable Strothenke, the case was different. He acted under a warrant of arrest regular on its face, and is not shown to have had any knowledge of any lack of jurisdiction of the justice. Under such circumstances, the officer is protected by his writ. Sprague vs. Birchard, 1 Wis. 457; Lueck vs. Heisler, 87 Wis. 644, 58 N.W. 1101."

Holz vs. Rediske, 116 Wis. 353.

"The warrant, being regular on its face, fully protects both the sheriff and the inspector, as is shown by the numerous authorities cited in the brief of defendants' counsel, among which will be found Gaertner v. Bues, 109 Wis. 165, 85 N. W. 388; Holz v. Rediske, 116 Wis. 353, 92 N. W. 1105; 24 Ruling Case Law, Title "Sheriffs," § 84; 25 Corp. Jur. 477-479; notes in 51 L. R. A. 193-225, and 42 L.R.A. N.S. 69-79."

Langen v. Borkowski, 188 Wis. 277 at 299.

"It is well established as the general rule that the process judgment or order of the court having apparent jurisdiction, if valid on its face, affords complete protection to a sheriff or constable from liability for any proper or necessary act done in due execution, * * * "

57 C. J. 902.

"Where the court had jurisdiction of the subject matter and the process shows apparent jurisdiction in the particular case, the officer is protected if he acted in good faith although the court did not in fact acquire jurisdiction, or although the court had lost jurisdiction before the process was issued."

57 C. J. 905

There is no allegation that the sheriff knew the County Court was without jurisdiction. Even if we assume, therefore, that the Court was without jurisdiction, the complaint states no cause of action as against the defendant, Sheriff George O'Brien.

C. No liability in tort can attach to a litigant who merely seeks to obtain his legal rights.

It is alleged with reference to the third cause of action in the complaint, that the defendants, Henry Feuerstein and Helen Feuerstein, directed the sheriff in falsely imprisoning the plaintiff. It is clearly apparent from the reading of the entire complaint that the sole and only part which they took in this direction was to procure the issuance of a writ of assistance on proper notice, and cause it to be delivered to the sheriff. That there can be no liability on these defendants is clear, and that the complaint fails to state a cause of action in that respect is likewise too clear to require extended argument.

In the case of *Langen v. Barkowski,* 188 Wis. 277, previously referred to, the Court cited *11 R.C.L.,* page 808, as follows, in speaking of a person situated as the Feuersteins are situated in this matter:

"Since such person is usually a layman not familiar with and not pretending to determine the

legal procedure to be taken, it has been said to be unjust to hold him guilty of any tort if he merely makes to the magistrate an honest statement of the facts as he claims them to be and leaves it to the officers of the law to take such action as they deem proper, and under such circumstances many courts have held him not liable. To the same effect is 64 Wisconsin, 316; 24 N.W. 442."

It would be a strange anomaly were a litigant in our courts to be held liable for acts of officers and servants of the court, committed while in the performance of and the carrying out of the instructions, orders, writs, judgments and executions of the courts of this State.

IV.

THIS SUIT IN THE CIRCUIT COURT OF WALWORTH COUNTY IS A COLLATERAL ATTACK UPON THE ORDERS ISSUED BY THE COUNTY COURT OF WALWORTH COUNTY AND CANNOT BE MAINTAINED

A. Federal rule supports contention that County Court orders are voidable and not void, and not subject to collateral attack.

The County Court of Walworth County, by virtue of the legislative enactment which created it, has concurrent jurisdiction within prescribed limits with the Circuit Court of Walworth County, wherein these proceedings were instituted (See Appendix 1).

Among those matters in regard to which the County Court had concurrent jurisdiction with the circuit

court, are the foreclosures of real estate mortgages and all proceedings in reference thereto.

As appears by the complaint herein, the County Court acquired jurisdiction of the person of the defendant and the real estate in question by the institution of foreclosure proceedings which in due course matured in a judgment of foreclosure on April 21st, 1933.

Pursuant to that judgment sale was had on July 20, 1935. These were matters properly within the jurisdiction of the County Court and up to that point no conflict of jurisdiction had arisen.

Following the sale and prior to the confirmation appellant's petition in the Federal Court was reinstated. Upon the application for confirmation the County Court was authorized under long established rules of law, and in fact required to determine whether the jurisdiction of that court was completely terminated.

The Court, in the exercise of his judicial duty, decided that the county court retained jurisdiction and granted the order prayed for.

The appellant herein now institutes an action in the Circuit Court of Walworth County, a court having equal, but no greater jurisdiction, and no appellate jurisdiction over the County Court, collaterally attacking the order issued by the County Court.

It is clear that in order for the respondent to maintain his action and prevail in his appeal, the Circuit Court must find the orders referred to as being utterly void.

We respectfully submit that even if that court held that the judge of the County Court acted in excess of

his jurisdiction, the orders complained of are erroneous and voidable, not void. No appeal having been taken within the statutory period, the orders complained of are and must be free from collateral attack.

It is said in Vol. 1, Freeman on Judgments, P. 718-719 that:

> "If the circumstances which give rise to the jurisdiction do not exist in a particular case the authority to act does not arise. But the question as to whether or not they do in fact exist is a matter primarily for the court whose powers are invoked, and it has jurisdiction to examine and determine whether the particular application is within or beyond its authority. Its decision in this respect is itself the exercise of a power conferred by the pleading or other act invoking its jurisdiction, and if such decision is incorrect, whether because of lack of evidence or for any other reason, it is none the less binding upon the parties *unless and until set aside on appeal or by some other proceeding for that purpose. For jurisdiction to decide includes power to decide erroneously and to make the decision bind collaterally.*" (Italics ours)

The question as to whether or not a judgment rendered by a court upon matters within its jurisdictional scope is subject to collateral has been frequently considered by this Court.

In *Bradley v. Fisher,* 13 Wall. 335, 20 L. Ed. P. 646, the Court observed that a distinction must be observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject matter of the controversy.

Mr. Justice Field said:

> "Where jurisdiction over the subject matter is invested by law in the judge or in the court which

> heoholds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

The court by way of illustration pointed out that if a Court having only probate powers were to issue a warrant for a criminal offense it would be acting entirely without jurisdiction and would be liable to respond in damages for the exercise of a usurped authority. But that on the other hand if a judge of a criminal court were to proceed to the arrest of a defendant for the commission of a crime committed outside of his district, no liability would fall upon him for such an act, although it was clearly in excess of his jurisdiction.

It is contended in this case that the County Court erred in holding that it had jurisdiction after the filing of the petition in the Federal Court.

A case squarely in point and supporting our contention that the orders of the County Court cannot be collaterally attacked is *Dowell v. Applegate,* 152 U.S. 327, 14 Sup. Court, Rep. 611, 38 L. Ed. 463. Therein a judgment had been rendered in a District Court. The judgment was collaterally attacked on the ground that no diversity of citizenship existed and was vacated by the Supreme Court of the State of Oregon.

On appeal to the Supreme Court of the United States, Mr. Justice Harlan said:

> "It is claimed that the ground on which the Federal Court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States. But that was a question which the circuit court of the United States was competent

to determine in the first instance. *Its determination* of it was *the exercise of jurisdiction.* Even if that court *erred in entertaining jurisdiction,* its determination of that matter was *conclusive upon the parties* before it, and could not be questioned by them or *either of them collaterally,* or otherwise *than on writ of error or appeal* to this court." (Italics ours)

The cited case presents precisely the same situation as the case now before the court. If it be assumed that the sale was wrongly confirmed, then in both, the court erred in the exercise of its jurisdiction, but its decision could not be collaterally attacked.

B. Wisconsin decisions are controlling and support contention that County Court orders are voidable and not void, and not subject to collateral attack.

The law is also well settled in Wisconsin that an order or judgment issued or entered by any court in excess of its jurisdiction is voidable, not void, and cannot be attacked except by appellate proceedings in a court having appellate jurisdiction.

A case arising out of a plexus of facts strikingly similar to the matter now before the Court is *Johnson v. Brewers Fire Ins. Company,* 51 Wis. 570; 8 N.W. 297, in which a Michigan court, although all of the necessary papers in the form required by law had been duly filed for that purpose, refused to remove a cause to the District Court where a diversity of citizenship clearly existed.

The defendant refused to proceed further, a default judgment was rendered against him by the Michigan court and sued on in Wisconsin. On the trial in Wisconsin, the defendant contended that the Michigan judg-

ment was absolutely void on the theory that it had been rendered after that court had been completely divested of any jurisdiction over the cause.

The court held that the Michigan judgment was voidable only and could not be attacked in a collateral proceedings:

> "Mere error in the proceedings of the state court cannot be corrected by this court, or received here, for the obvious reason that we have no revisory power over that court. * * * We hold that when the case is within the Act of Congress and an application in proper form for its removal is made, it is the duty of the state court to accept the petition and bond, and proceed no further in the suit. This is the mandate of the statute. *But if the state court declines to relinquish its jurisdiction and proceeds to judgment such judgment is not void, but merely erroneous. Until it is reversed or set aside in a proper manner by an appellate court, it is valid and must be respected; certainly in a collateral proceeding.*" (Italics ours)

The general rules established by the foregoing decision have been followed and affirmed from time to time by the Supreme Court of Wisconsin.

The clean cut but often misunderstood distinction between an absolute want of jurisdiction and an act in excess of jurisdiction has been fully preserved. The former applies to an act or judgment performed in a matter where the court or judge so acting has absolutely no jurisdiction over the proceedings or the parties before him, and under no set of facts would have the power to act. The latter applies to an act or judgment done by a judge or a court in connection with a cause of action, the subject matter of which falls within that class and kind of cases, the jurisdiction of which is vested in that particular court.

Approval of and extensive elaboration of those rules of law will be found in *State ex rel Fowler v. Circuit Court,* 98 Wis. 143, 73 N.W. 788; *Comstock v. Boyle,* 134 Wis. 613, 114 N.W. 1110; *In re Clark,* 135 Wis. 437, 115 N.W. 387; *Harrigan v. Gilchrist,* 121 Wis. 127, 99 N.W. 909. And in *Re Rice's Will,* 150 Wis. 401, 136 N.W. 956, where a court of probate attempted to exercise civil jurisdiction.

The Court held in the last cited case that whether a judgment is jurisdictionally bad for judicial error instead of for excess of power, turns on whether the court had jurisdiction of such subjects as the one deliberated upon.

So that when, as in this case, a judge situated as was the respondent Luce, has acquired full jurisdiction of the cause, any judgment rendered in the exercise of that jurisdiction even if clearly erroneous, can only be tested by appeal. This is true even though the error was committed as is claimed here, by retaining jurisdiction after jurisdiction had been acquired by another tribunal.

It is not for this court to decide in passing upon this phase of the case, whether the District Court acquired jurisdiction upon the reinstatement of the appellant's petition. It is rather for this court to decide whether the County Court of Walworth County had jurisdiction of the person of the respondent and the subject matter of the action prior to the time of reinstatement of the petition.

The appellant admits by allegations in his complaint that notice of the proceedings complained of were duly served upon him and that he had due notice of the pendency and maintenance of such proceedings. Both

the order confirming the sale and the order granting the writ of assistance were appealable orders.

If the appellant felt that he had been aggrieved by either of those orders, or that the orders were issued without authority, or contrary to law, it was his right and his duty to appeal therefrom to the Supreme Court of the State of Wisconsin within the time fixed by the Statutes of that State.

Or, if the appellant believed, as he alleges in his complaint, that the exclusive jurisdiction of the appellant's property, real and personal, was vested in the United States District Court, or that the jurisdiction of the state court previously acquired had been terminated or superseded by the Federal Court, the burden rested upon him to assert those rights promptly and expeditiously. Upon him was the burden to make due application to the Federal Court for a judicial stay enjoining the state court from exercising any further jurisdiction.

Instead of so doing, it affirmatively appears that the appellant, with full knowledge that an application for confirmation of sale had been made, with full knowledge that application for a writ of assistance had been made, and in spite of the fact that possession of the real estate in question had been delivered to the purchaser on March 12, 1936, stood idly by and in no wise questioned the jurisdiction of the state court until he instituted this suit in September, 1937, approximately two years after the issuance of the order confirming the sheriff's sale.

Despite the fact that three courses were open to him, to-wit: 1st, an appeal from the orders of the state court; 2nd, an application for a stay of proceedings in the state court, and 3rd, an application for a stay of proceed-

ings in the Federal Court, none of these were pursued, as the complaint affirmatively demonstrates.

Since no appeal was taken in the foreclosure proceedings in the state court and no judicial stay procured in either court, the orders of the Walworth County Court confirming the sale and issuing the writ of assistance are valid and binding, even if erroneous, and are not subject to collateral attack.

C. Authorities cited by appellant claiming County Court orders void are inapplicable.

Counsel cite *Wright v. Union Central Life*, 304 U.S. 502 as holding that the proceedings had after the reinstatement of the petition in this case are a nullity and void. That case involved a direct appeal. Thus, the issue might have been the same, assuming other elements were in common, had there been a direct appeal from the order confirming the sale. But, it is quite another matter to say that it was wholly void so that it could be attacked collaterally. The *Wright* case and the other cases involving a direct appeal are not applicable.

Nor do we have any quarrel with their authority to the effect that acts done by a court which has no jurisdiction either over the person, the cause, or the process, are *Coram non judice*. As previously pointed out herein, the County Court had acquired jurisdiction of the person and of the cause by the institution of foreclosure proceedings in due course. Therefore, these authorities are inapplicable. The County Court was then called upon to determine whether it had jurisdiction to confirm. Necessarily, "Jurisdiction is the power to decide wrongly as well as rightly."

This is quite a different situation than referred to by counsel where there is a complete absence of jurisdiction such as, for instance, if a probate court should proceed to entertain an application for a criminal warrant.

V.

THE FILING OF THE AMENDED PETITION UNDER SECTION 75 DID NOT EFFECT AN AUTOMATIC STAY OF FORECLOSURE PROCEEDINGS PENDING IN STATE COURT AND COUNTY COURT HAD JURISDICTION TO CONFIRM SALE PREVIOUSLY HELD

A. Act at most subjects farmer and property not in custody or control of some other court to exclusive federal jurisdiction.

It is contended by the appellant that the mere filing of a petition in the Federal Court automatically stayed all proceedings then pending in the State Court. We are not unmindful of the fact that some of the Federal Circuits have so held. In others it has been held that the proceedings in the State Court are stayed only when the proper order is issued in the Federal Court. Some circuits have held that such an order can be issued summarily. *In re Price*, 16 Fed. Supp. 836. The question has generally arisen on the application for a stay order and it is held that the Bankruptcy Court has that power, except where a homestead is involved which creditors could not reach in any event, and where the State Court proceedings had been begun more than four months previous. 6 *Am. Jur.* 722. It has been a question of an attempt to commence proceedings in a State Court after the petition has been filed. This

question was not involved in *Wright v. Vinton Branch Mountain Trust Co.*, 300 U. S. 440, or in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502. With reference to *Adair v. Bank of America National Trust & Savings Association*, 303 U. S. 350, the Supreme Court of Wisconsin said: (Transcript 15)

> "Nor do we find anything in the case of Adair v. Bank of America National Trust and Savings Association, — U. S. —, decided February 28, 1938, to the contrary. While it is stated in that opinion that Sec. 75 provides that the filing of the petition shall effect a stay, the cases cited in support of the proposition are cases relating to the power of a court of bankruptcy to stay proceedings and it is held that courts of bankruptcy have that power."

We submit that this Court has not specifically passed upon the question.

It is our contention that Section 75 provides for a judicial stay when the proper facts are made to appear and that the filing of the petition does not automatically stay proceedings already instituted and pending in the State Court.

We respectfully submit that Section 75 is a part of the Bankruptcy Act and that its provisions must be construed in the light of established principles and adjudications laid down by the courts in the past.

We are not unmindful of that portion of Subsection N of Section 75 of the Bankruptcy Act which reads as follows:

> "The filing of a petition shall immediately subject the farmer and all his property, wherever located, for the purpose of this section to the exclusive jurisdiction of the Court * * * "

But from a reading of the entire section it is clear that it was not intended that the mere filing of a petition would act as a stay of proceedings then pending in a State Court.

Subsection S(2) U.S.C.A. Title 11, Sec. 203, provides as follows:

> "When the conditions set forth in this section have been complied with, the Court shall stay all judicial or official proceedings in any court for a period of three years."

Had Congress intended that the Bankruptcy Court was to be vested with exclusive jurisdiction upon the mere filing of a petition, and that such filing amounted to a stay of all other proceedings instanter and without any other affirmative action, no reason would exist for a stay at a subsequent stage in the proceedings.

It has been stated in dealing with the bankruptcy law that the filing of a petition in bankruptcy operates to invest the bankruptcy court with exclusive jurisdiction over controversies relating to property in the possession of the bankrupt at the time of bankruptcy of which he claims the ownership. *Ex Parte Baldwin,* 291 U. S. 610; 78 L. Ed. 1020, 54 S. Ct. 551, 6 Am. Jur. P. 531, Par, 25. Yet this seemingly decisive language has been modified by later decisions of this Court.

> "The doctrine has been limited by later decisions of the Supreme Court (U.S.) in which it is adjudged applicable only to parties who have no substantial claim of lien upon, or title to, the property of the bankrupt and not to those who have such claims of existing liens or titles when the petition in bankruptcy is filed. *In reality, the filing is neither a caveat nor an attachment; it creates no lien.* It may, perhaps, better be said that the filing

of the petition *is an assertion of jurisdiction* with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. *Actual possession* by the bankruptcy court is an indispensable condition of its exclusive jurisdiction." (Italics ours) Vol. 6, Am. Jur. P. 532.

To the same effect is *Straton v. New,* 283 U. S. 318, 75 L. Ed. 1060, 51 S. Ct. 465, in which Mr. Justice Roberts said

> *"The filing of the petition is an assertion of jurisdiction* with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate."

And in *6 Am. Jur.* at P. 535 it is said:

> *"Bankruptcy proceedings do not, merely by virtue of their maintenance, terminate an action already pending in a State Court,* to which the bankrupt is a party or deprive the Court of jurisdiction in such case especially where jurisdiction of both the subject matter and the parties has been acquired by the State Court before the filing of the petition in bankruptcy."

It is clear therefore that the term "exclusive" as it has been applied in the administration of the bankruptcy law, has not been construed as divesting the State Court of jurisdiction acquired prior to the filing of the petition in bankruptcy but only as an assertion of jurisdiction.

That this is the true intent of Section 75, we submit, is further demonstrated by the last sentence of Subsection N of that Section, which reads as follows:

> "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with re-

spect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

There are urgent reasons why a bankrupt desiring a stay of proceedings in the State Court should be required to ask for and obtain a stay in either the Federal or State Court. No judicial problem is more vexatious, nor more difficult of discernment than questions of jurisdiction particularly between the State and Federal Courts. Does not the orderly administration of justice require that before a State Court is ousted of jurisdiction by a Federal Court or vice-versa, that a magistrate make and enter an order to that effect and cause it to be served upon all interested persons?

Property rights and titles to lands are invariably involved in proceedings under the bankruptcy act. If state courts are automatically divested of jurisdiction by the mere filing of a petition in bankruptcy uncertainty and inextricable confusion must inevitably follow.

In this connection Mr. Chief Justice Rosenberry, speaking for the Supreme Court of the State of Wisconsin (Transcript page 15) said:

"It may be conceded that the filing of the petition in the federal court created certain rights which the plaintiff in this action might have asserted either in the federal court or in the state court. However, the plaintiff failed to assert such rights either in the federal or state court as has already been stated. All that this court is called upon to do is to determine whether or not the order of confirmation was valid and that depends upon whether the county court for

Walworth county had jurisdiction to make the determination. If it should be held that the mere filing of the petition divested the state court of jurisdiction the whole matter would be thrown into inextricable confusion. No one would know whether a judgment of foreclosure of a state court with an order confirming a sale thereunder was valid or void until a search had been made of the records of the federal courts.

We need not consider nor discuss the question whether the congress has power to divest the jurisdiction of a state court which has once attached. That question is not presented by this record. It would seem from a consideration of Sec. 75 as amended that the filing of the petition automatically operated to extend the period of redemption. It is possible that that state of facts if made to appear would make the order of the trial court erroneous but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit court is void.

We adhere to our former determination that the provisions of Sec. 75 were not intended to provide for a statutory stay but to create rights when properly asserted are grounds for a judicial stay." (fols. 39-73).

(Note: The words "circuit court" in the last sentence are obviously in error. The order referred to by Chief Justice Rosenberry was issued by the County Court of Walworth County, a court having concurrent powers with the Circuit Court.)

We submit a study of the entire act, at most, leads to the construction that the filing of the petition subjects the farmer and all his property, *not in custody or control of some other court,* to the exclusive jurisdiction of the bankruptcy court.

B. The cases cited by the appellants in support of their contention that Section 75 is self-executing do not apply.

At Pages 10, 11 and 13 of the appellants' brief, there will be found a number of United States Supreme Court decisions in support of appellants' contention that the statute in question is self-executing, and in support of that contention assert that the adjudications relating to the general bankruptcy law must control. It is true, as we pointed out elsewhere in our brief, that the Supreme Court of the United States has always held that Bankruptcy Courts have exclusive jurisdiction of the property of the bankrupt from the time of filing the petition.

We are also familiar with the rule oft-times repeated, that "the filing of the petition is a caveat to all the world and in fact an attachment and an injunction."

But that case and the other cases cited by the appellants are in support of the proposition that the Federal Court may, by injunction either summarily or upon notice, restrain a state court from exercising jurisdiction after the filing of the petition in the federal court. In the case of *May v. Henderson,* 268 U. S. 111, 69 L. Ed. 870, this court said:

> "In consequence any person acquiring an interest in property of the bankrupt after the filing of a petition with notice of it, may be directed to surrender the property thus acquired by summary order of the bankruptcy court."

And in *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734, 75 L. Ed. 645, the Court after repeating the "exclusive jurisdiction" rule and that exercise of that jurisdiction forbids interference by state courts, also said "as mortgaged property ordinarily lies within the district in

which the bankruptcy court sits, and the mortgagee can consequently be served with its process, the procedure usually followed is for that court to restrain the institution of foreclosure proceedings in any other. Where the land lies outside the limits of the district in which the bankruptcy court sits, ancillary proceedings may be instituted in the District Court of the United States for the district in which the land is, and an injunction against foreclosure issued by the court of ancillary jurisdiction."

And in *Gross v. Irving Trust Company,* 289 U. S. 342, 77 L. Ed. 1243, cited at page 10 of the appellants' brief, in a case involving the question of whether or not a state court had the power to fix compensation of state receivers and their counsel after bankruptcy in the Federal Court had intervened, this Court held that bankruptcy courts have exclusive jurisdiction and that its possession and control cannot be affected by other proceedings, but the court further said:

> "Nevertheless, due regard for comity, which means, in this connection, no more than judicial courtesy between the courts undertaking to deal with the same matter—would suggest that ordinarily the trustee in bankruptcy might well be instructed by the bankruptcy court, before taking final action, to request the state court to recognize the exclusive jurisdiction of the former and set aside any orders already made conflicting therewith, as was done with good results in the case of Re Diamond, supra ((C. C. A. 6th) 259 Fed. pp. 72, 75, 44 Am. Bankr. Rep. 268).

And in *Acme Harvester Company v. Beekman,* 222 U. S. 300, 56 L. Ed. 209, cited by appellants at page 13 of their brief, the question involved was whether or not the Federal Court had the power to restrain a state court from pursuing an action in debt instituted after the fil-

ing of a petition in bankruptcy. This court, in discussing the rule, said:

> "The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate."

We respectfully submit therefore that the authorities cited by the appellants do not support their position and that the general rule in bankruptcy matters is that the filing of a petition in a bankruptcy court does not ordinarily and without notice suspend the power of all other courts to act, but merely is an assertion by the Federal Court of its jurisdiction, with a view to a determination of the status of the bankrupt and a settlement and distribution of his estate. The assertion of jurisdiction we contend, must be exercised by an injunctional order.

VI.

FULL FAITH AND CREDIT CLAUSE OF FEDERAL CONSTITUTION WOULD BE VIOLATED IF COURT REFUSED TO RECOGNIZE VALIDITY OF FORECLOSURE SALE AND PROCEEDINGS IN STATE COURT

Sec. 1 of Article 4 of the United States Constitution provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

This necessarily requires that the State Court has authority to proceed to confirm a foreclosure sale held pursuant to a valid judgment of foreclosure.

The County Court of Walworth County decided that the Frazier-Lemke Act was not applicable to the case before it where the foreclosure sale had been had and necessarily decided that the filing of the amended petition in the Bankruptcy Court, without a specific stay order, did not stay the County Court or divest it of jurisdiction to confirm the sale. The Supreme Court of Wisconsin affirmed that decision and said: (R. 15)

> "It is possible that that state of facts if made to appear would make the order of the trial court erroneous but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit (county) court is void."

The Supreme Court of Wisconsin has, therefore, decided that even if the decision by Judge Luce was erroneous, that it was nevertheless valid as within his jurisdiction to make and binding since it had not been subjected to direct attack by appeal.

This is an independent, non-Federal ground, amply adequate to support the State Court decision and is not subject to review by appeal to this Court. The Full Faith and Credit Clause requires that this Court give full faith and credit to the decision of the Supreme Court of Wisconsin in so far as it is based upon the non-Federal ground.

It follows, likewise, that the decision of the County Court of Walworth County in the foreclosure suit, not having been appealed from, is valid and binding and entitled to full faith and credit.

This Court has held that under the Constitution, Federal Courts are just as much bound to honor judgments of a State Court as are courts of any state foreign thereto. *Cooper vs. Newell*, 173 U. S. 555, 43 L. Ed. 808.

VII.

THE COMPLAINT AFFIRMATIVELY DISCLOSES A LACK OF GOOD FAITH ON THE PART OF THE APPELLANT, OR A COMPLIANCE WITH THE PROVISIONS OF SECTION 75

The complaint alleges that the original petition was filed by the appellant in the District Court of the United States for the Eastern District of Wisconsin on the 2nd day of October, 1934. It was dismissed on June 27th, 1935, and subsequently was reinstated on the 6th day of September, 1935.

The complaint however is barren of any allegation that a plan of composition was submitted, or that it was accepted or denied, or any report submitted by the Commissioner. The complaint is likewise barren of any allegation that the appellant has been adjudicated a bankrupt in accordance with Section 75(s).

Although nearly eighteen months elapsed from the date the original petition was filed before his possession of the real estate was disturbed, and nearly three years elapsed from the date of filing and the commencement of this action, the complaint shows that the appellant did nothing to comply with the terms of the Act.

We submit therefore that he must be deemed to have abandoned the proceedings in the Federal Court and to

have waived and surrendered any rights the filing of the petition may have invested in him.

The law in question, the Frazier-Lemke Act, was not enacted by the Congress of the United States for the mere purpose of providing a means by which a debtor unwilling, or unable to meet his obligations could prevent his creditors from pursuing their legal remedies. It required the debtor to seasonably take a definite course of action to the end that one or two results should be reached, either a composition, or, if that was impossible, an adjudication in bankruptcy.

It is stated in *Vol. 8, C. J. S.*, Page 1750, Par. 808, that:

> "One seeking benefits provided by the Act, after initiating the procedure, must carry the burden of pursuing the various steps provided diligently, honestly, in good faith and without unnecessary delay."

The Federal Courts in discussing Section 75 have uniformly held that:

> "The submission of an equitable, feasible and good-faith proposal of compromise or extension on the part of the debtor is a condition precedent to his right to proceed further under the provision of Section 75 of the Bankruptcy Act."
>
> *In re Alatalo*, 26 F. Supp. 276.

And in *Baxter v. Savings Bank of Utica*, N. Y. 92, Fed. (2nd) 404, the Court said:

> "A good-faith effort to compromise with creditors is a prerequisite to extension relief in agricultural composition proceedings."

To the same effect is the case of *Pearce v. Coller*, 92 F. (2nd) 237, where it was held that a farm debtor who did not comply with statutory requirements relative to composition and plan of extension, was not entitled to relief under the Act.

And in *re Henderson*, 100 F. (2nd) 820, it was said:

> "A proceeding for composition or extension of debts may not be converted into a sham for the purpose of gaining whatever the debtor wishes by way of procedural delays and hindrances to creditors where no legitimate purpose of the act authorizing such proceedings will be served."

The complaint, it appears to us, affirmatively demonstrates a complete and absolute lack of "good faith" on the part of the appellant and the complaint is rendered demurrable for that reason in addition to the other grounds relied upon by the appellant.

VIII.

DEMURRERS WERE CORRECTLY SUSTAINED AS TO SECOND AND THIRD CAUSES OF ACTION AS ALLEGATIONS ARE INSUFFICIENT UNDER WISCONSIN LAW

A. The second cause of action fails to state a cause of action against the defendants Judge Luce and Henry and Helen Feuerstein because it fails to allege that they were present or that they aided or abetted the sheriff, and because it fails to allege that they intended to cause the sheriff to commit an assault and battery.

With reference to the second cause of action, in paragraph two, it is alleged that the assault and battery by the defendant George O'Brien "was under the direction of the other defendants in this action." This, standing alone, might be sufficient to bind the defendants Luce and Feuersteins, but, when taken in connection with the rest of the sentence, namely—"who wrongfully and un-

lawfully directed the said George O'Brien to make such entry and wrongfully remove the plaintiff and his family therefrom," it is insufficient, for such allegation reasonably implies only that the other defendants directed the Sheriff to make entry and remove the plaintiff, not that they assault and beat him.

> "In order to render one liable as a principal for the assault and battery committed by another, it is necessary that the principal must have *intended* by his statements to the employee to cause him to commit an assault and battery."

Krudwig vs. Koepke, 223 Wis. 244.

Certainly no such intention can be spelled from the language used. It is not alleged that the defendants Luce and Henry and Helen Feuerstein were present or that they aided or abetted the Sheriff either by word or deed. That Judge Luce signed an order directing the Clerk to issue a Writ of Assistance or that the Feuersteins petitioned for such an order, does not render them accountable for the acts of the officer in enforcing the same. *5 C. J. 626.*

B. The language of the third cause of action is wholly insufficient to state a cause of action for false imprisonment, as it fails to allege in what respect the restraint was illegal.

1. The allegations in the third cause of action fail to connect Honorable Roscoe R. Luce and Henry and Helen Feuerstein with the alleged false imprisonment.

A reading of the allegations of the third cause of action shows that no offense is charged against the defendants,

Roscoe R. Luce and Henry and Helen Feuerstein. They are not connected in any way or charged with any responsibility for the alleged false imprisonment of the appellant by the defendant, George O'Brien. The only language in this cause of action which could in any way be construed to connect the defendants, Luce and Feuerstein, with a charge of false imprisonment is by the first paragraph which incorporates paragraph 15 of the first cause of action; but this does not in any way charge that the defendants, Luce and Feuersteins, conspired with the defendant, O'Brien, to *imprison* the appellant but merely that they acted in collusion with him to effect a plan or scheme to acquire possession of his farm. This certainly does not go so far as to charge them either as principles or accessories to the alleged false imprisonment.

2. The third cause of action fails to allege facts showing that the imprisonment was extra judicial or without legal process.

A complaint for false imprisonment should allege that the arrest or imprisonment was caused or procured by the defendant; it should allege facts showing that the arrest was without probable cause and unlawful if made without process; and that the plaintiff was privileged or exempt from arrest if the arrest was made upon process regular on its face; or that the process was void for lack of jurisdiction or other cause.

2 Winslow's Forms, Pleading and Practice, Third Edition, Par. 2962.

The complaint does not disclose whether the arrest was with or without process.

By the demurrer, the defendants admit that appellant was restrained. They do not admit the legal conclusion

"that he was wrongfully and unlawfully restrained." From all that appears the appellant may have been arrested pursuant to valid process; or he may have been arrested legally without process. The facts must be alleged, not conclusions of law.

> "Where the facts alleged do not show that the acts complained of were unlawful or wrongful, they are not shown to be so by a mere allegation that they are wrongful and unlawful."
>
> "Where the alleged wrongful detention is pursuant to process, facts must be stated showing that it is extra-judicial or without jurisdiction. It is insufficient to allege merely that the court or defendant had no jurisdiction."
>
> *25 C. J. 533.*
>
> "The complaint should allege facts showing that the imprisonment was extra-judicial or without legal process."
>
> *King vs. Johnson,* 81 Wis. 578.
> *Murphy vs. Martin,* 58 Wis. 276.

The imprisonment is not necessarily false as it does not properly appear that the arrest, if without process, was under circumstances making the arrest false, or that if it was made pursuant to process, that the same was extra judicial.

As a matter of fact, though the plaintiff did not see fit to allege it, the plaintiff was arrested for resisting an officer. A warrant was regularly issued upon a written complaint and the plaintiff appeared before Roscoe R. Luce, as County Judge, and entered a plea of *guilty* and was sentenced therefor.

As the plaintiff has failed to allege the ultimate facts showing that the complaint and warrant were void and

proceedings illegal (or that the arrest was made under circumstances where the same was not legally permitted without process) we submit that the third cause of action is fatally defective.

CONCLUSION

It should not be lost sight of that this is not a proceeding under the Frazier-Lemke Act. Counsel for the appellant seemingly treat it as such as they do not advert to the other issues necessarily involved. They conclude their brief with a statement that the decisions of the Supreme Court of Wisconsin should be reversed and the causes remanded with instructions that the State Court allow proceedings in accordance with the provisions of Sec. 75 of the Bankruptcy Act. In behalf of the respondents, Judge Roscoe R. Luce, and Sheriff George O'Brien, we would have no quarrel with that prayer. It would seem that so far as this case is concerned that counsel have failed to properly analyze the legal remedy of their client assuming that the principal contention outlined in their brief is correct.

This is a suit for damages against the Judge, the Sheriff, and the litigants in tort for trespass, assault and battery and unlawful imprisonment. It is one thing to say that the stay provided in Sec. 75 is self-executing and that the County Court was in error in confirming the sale. It is quite another to say that the Judge and the Sheriff and even the litigants are liable in tort for damages by reason thereof.

On the motion to dismiss or, in the alternative, to affirm for want of a substantial Federal question, we submit that there are ample, independent and adequate non-

Federal grounds in the record in support of the State Court decision, and that the motions should be granted.

If they be denied, we contend that the judgment should be affirmed for the following reasons:

1. A. The respondent, Judge Luce, acted in his judicial capacity and is immune from liability even if error were committed, for he was confronted with facts which had legal value or *color* of legal value upon the question of his jurisdiction.

B. The respondent, Sheriff George O'Brien, is immune from liability in executing the Writ of Assistance under Wisconsin law as it was fair on its face.

C. No liability can attach in tort to the respondents, Feuerstein, under Wisconsin law.

2. This suit for damages in the Circuit Court of Walworth County is a collateral attack upon the orders of the County Court of Walworth County and since there was no stay or direct appeal, it cannot be attacked collaterally.

3. The County Court of Walworth County had jurisdiction to enforce its foreclosure decree and confirm the sale where the sale was had and deed delivered prior to the reinstatement of appellant's petition.

4. The filing under Sec. 75 is not an automatic stay but at most subjects the debtor and all of his property not in the custody or control of some other court, to the exclusive jurisdiction of the Bankruptcy Court and a specific stay order is required as to property in the control of such State Court.

5. The Full Faith and Credit Clause requires that this Court recognize the validity of the decision of the

State Supreme Court in so far as it is based upon non-Federal grounds and, likewise, the proceedings in the County Court since no direct appeal therefrom was taken.

6. Because the complaint shows that the appellant has failed to comply with the provisions of Sec. 75 and must be deemed to have abandoned the same.

7. Because the demurrers as to the second cause of action as to the respondents Luce and Feuerstein were correctly sustained on questions of pleading under Wisconsin law and because the demurrer to the third cause of action was correctly sustained as to all respondents for the reason that it was an insufficient pleading under Wisconsin law.

Most respectfully submitted,

ARTHUR T. THORSON, Elkhorn, Wis.

J. ARTHUR MORAN, Delavan, Wis.

Counsel for Respondents.

APPENDIX I

LAWS OF WISCONSIN, 1907.

No. 257, S. Published June 20, 1907.

CHAPTER 234.

AN ACT to confer civil and criminal jurisdiction on the county court of Walworth County.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Concurrent with circuit court for cases not over $25,000. SECTION 1. There is hereby conferred on the county court of Walworth county, jurisdiction in all civil actions and proceedings in law and in equity, concurrent with and equal with the jurisdiction of the circuit court in said county, for all claims, demands and sums and to and concerning all property, not exceeding the sum or value of twenty-five thousand dollars; provided, that said county court shall have jurisdiction in all actions in said county for the foreclosure of mortgages and mechanic liens, in which the amount claimed does not exceed the sum above mentioned, although the property to be affected by the judgment exceeds the sum of twenty-five thousand dollars in value; and of all actions for divorce or for affirmance or annulment of marriage contracts; and all actions for removing clouds and quieting title to real estate and all actions for partition of real estate; and in all bastardy actions and in all criminal cases except murder, manslaughter and homicide; and to the amount and within the limits aforesaid the said county court shall be a court of general jurisdiction, with the same power and jurisdiction in all civil and criminal actions and proceedings, and including the power of review of records on certiorari, discharging mortgages of record,

and such other special powers as are now or may hereafter be conferred by the statute upon the circuit court, coming within the above limitations, as belong to and are exercised by the circuit court in and for said county.

Writs and legal process. SECTION 4. The said county court, within the limits aforesaid, shall be a court of record, with a clerk and seal, and shall have full power and authority to issue all writs and legal process, proper and necessary to carry into effect the jurisdiction conferred by this act and the laws of this state, and to carry out such jurisdiction shall have and exercise all powers now possessed, or which may hereafter be possessed by the circuit courts of this state, and the same proceedings shall be had by the parties to procure such writs and process as in circuit courts and such writs and process shall be issued, executed and returned in the same manner and with like effect as in the circuit courts.

Execution: circuit court powers conferred. SECTION 8. All judgments, orders and decrees, made and entered in and by said county court, shall have the same force, effect and lien, and be executed and carried into effect and enforced, as judgments, orders and decrees, made and entered in the circuit court, and all the remedies given, and proceedings provided for the collection and enforcement of the judgments, orders and decrees of the circuit court, shall apply to and be exercised by and pertain to said county court.

Supreme court's review same as for circuit court. SECTION 9. All orders and judgments of said county court may be reviewed by the supreme court in the same manner and with like effect that judgments and orders of the circuit court may be reviewed; and the supreme court shall have the same power and jurisdiction over

such actions, proceedings, orders and judgments as it has over actions, proceedings, orders and judgments in the circuit court of said county, and the parties shall have the same rights to writs of error and appeal from said county court to the supreme court of this state as now, or may hereafter be, allowed by law from circuit courts of this state and may demand and shall be entitled to receive from the judge of said county court a bill of exceptions or case and have the same settled in the same manner and under the same restrictions as in the circuit court and the same shall be heard and settled within the same time as now required or may hereafter be required in the circuit court, by law or the rules and practice of said circuit court or of the said county court relative thereto.

Circuit court procedure unless inapplicable. SECTION 28. The general provisions of the statutes of Wisconsin, and all the general laws which may at any time be in force relative to circuit courts, and actions and proceedings therein, in civil and criminal cases, shall apply also to said county court, unless inapplicable, and except as otherwise provided in this act; and the rules of practice prescribed or which may hereafter be prescribed by the justices of the Supreme Court for circuit court, shall, unless inapplicable, be in force in said county court, and the judge of said county court shall have power to punish for contempt in the same manner that the judges of circuit courts are or may be authorized by law to punish for contempts; and said county court shall have power to make and enforce such other rules of practice as may be necessary.

Approved June 18, 1907.

(In effect July 1, 1907.)

(Other sections of the Act are omitted as not pertinent.)

SUPREME COURT OF THE UNITED STATES.

Nos. 120, 121.—October Term, 1939.

120	Ernest Newton Kalb and Margaret Kalb, his Wife, Appellants, *vs.* Henry Feuerstein and Helen Feuerstein, his Wife.	Appeals from the Supreme Court of the State of Wisconsin.
121	Ernest Newton Kalb, Appellant, *vs.* Roscoe R. Luce, Henry Feuerstein, Helen Feuerstein and George O'Brien.	

[January 2, 1940.]

Mr. Justice Black delivered the opinion of the Court.

Appellants are farmers. Two of appellees, as mortgagees, began foreclosure on appellants' farm[1] March 7, 1933, in the Walworth (Wisconsin) County Court; judgment of foreclosure was entered April 21, 1933; July 20, 1935, the sheriff sold the property under the judgment; September 16, 1935, while appellant Ernest Newton Kalb had duly pending[2] in the bankruptcy court a petition for composition and extension of time to pay his debts under section 75 of the Bankruptcy Act (Frazier-Lemke Act),[3] the Walworth County Court granted the mortgagees' motion for confirmation of the sheriff's sale; no stay of the foreclosure or of the subsequent action to enforce it was ever sought or granted in the State or bankruptcy court; December 16, 1935, the mortgagees, who had purchased at the sheriff's sale, obtained a writ of assistance from the

[1] In both No. 120 and No. 121, the complaints alleged that appellant Kalb and his wife executed the mortgage. In No. 120 both Kalb and his wife were alleged to be owners of the farm; while in No. 121, appellant Kalb was alleged to be the owner.

[2] October 2, 1934, the petition was filed and approved. June 27, 1935, the petition was dismissed, but September 6, 1935, it was reinstated and the order of dismissal was vacated pursuant to the second Frazier-Lemke Act, 11 U. S. C. 203, § 5.

[3] 11 U. S. C. 203.

State court; and March 12, 1936, the sheriff executed the writ by ejecting appellants and their family from the mortgaged farm.

The questions in both No. 120 and No. 121 are whether the Wisconsin County Court had jurisdiction, while the petition under the Frazier-Lemke Act was pending in the bankruptcy court, to confirm the sheriff's sale and order appellants dispossessed, and, if it did not, whether its action in the absence of direct appeal is subject to collateral attack.

No. 120. After ejection from their farm, appellants brought an action in equity in the Circuit Court of Walworth County, Wisconsin, against the mortgagees who had purchased at the sheriff's sale, for restoration of possession, for cancellation of the sheriff's deed and for removal of the mortgagees from the farm. Demurrer was sustained for failure to state a cause of action and the complaint was dismissed. The Supreme Court of Wisconsin affirmed.[4]

No. 121 is a suit at law in the State court by appellant Ernest Newton Kalb against the mortgagees, the sheriff and the County Court judge who confirmed the foreclosure sale and issued the writ of assistance. Damages are sought for conspiracy to deprive appellant of possession, for assault and battery, and for false imprisonment. As in No. 120, demurrer was sustained, and the Supreme Court of Wisconsin affirmed.[5]

In its first opinion the Supreme Court of Wisconsin said: "It is the contention of the plaintiff [mortgagor] that this statute is self executing,—that is, that it requires no application to the state or federal court in which foreclosure proceedings are pending for a stay; in other words, that it provides for a statutory and not for a judicial stay. Plaintiff's claims under the Bankruptcy Act present a question which clearly arises under the laws of the United States and therefore present a federal question upon which determination of the federal courts is controlling." Addressing itself solely to this Federal question of construing the Frazier-Lemke Act, the Wisconsin court decided that the Federal Act did not itself as an

[4] — Wis. —.

[5] Demurrer to one count against the sheriff for assault and battery was overruled, but the Supreme Court of Wisconsin reversed as to this count. The opinion of the court upholding the demurrer appears in Kalb *v.* Luce, 228 Wisconsin 519, 279 N. W. 685. Appeal to this Court was dismissed because no final judgment had been entered. 305 U. S. 566. Upon remand the State Circuit Court dismissed, the Supreme Court of Wisconsin affirmed, "for the reasons . . . stated" in its opinion in Kalb *v.* Luce, *supra*, — Wis. —, and the appeals here are from the judgments of dismissal, — U. S. —.

automatic statutory stay terminate the State court's jurisdiction when the farmer filed his petition in the bankruptcy court. Since there had been no judicial stay, it held that the confirmation of sale and writ of assistance were not in violation of the Act.

Appellees insist, however, that the Wisconsin court on rehearing rested its judgment on an adequate non-federal ground. If that were the fact, we would not, under accepted practice, reach the State court's construction of the Federal statute.[6] The statement on rehearing relied on as constituting the non-federal ground was: "We need not consider nor discuss the question whether the congress has power to divest the jurisdiction of a state court which has once attached. That question is not presented by this record. It would seem from a consideration of sec. 75 as amended that the filing of the petition automatically operated to extend the period of redemption. It is possible that that state of facts if made to appear would make the order of the trial court erroneous but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit court is void."

But if appellants are right in their contention that the Federal Act of itself, from the moment the petition was filed and so long as it remained pending, operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a Federal question.

It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack.[7] But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy

[6] Honeyman v. Hanan, 300 U. S. 14, 18; Lynch v. New York ex rel. Pierson, 293 U S. 52, 54; Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157, 164; Hammond v. Johnson, 142 U. S. 73.

[7] No. 122, Chicot County Drainage District v. The Baxter State Bank, this day decided; Stoll v. Gottlieb, 305 U. S. 165, 171, 172; Dowell v. Applegate, 152 U. S. 327, 340.

legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally.[8] Although the Walworth County Court had general jurisdiction over foreclosures under the law of Wisconsin,[9] a peremptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no State court have jurisdiction over a petitioning farmer-debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack.[10] The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land.[11] The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts—State and Federal—must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone.

We think the language and broad policy of the Frazier-Lemke Act conclusively demonstrate that Congress intended to, and did deprive the Wisconsin County Court of the power and jurisdiction to continue or maintain in any manner the foreclosure proceedings against appellants without the consent after hearing of the bankruptcy court in which the farmer's petition was then pending.[12]

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[8] Vallely v. Northern Fire Ins. Co., 254 U. S. 348, 353-4; and compare Elliott et als. v. The Lessee of Piersol et al., 1 Pet. 328, 340; Williamson et al. v. Berry, 8 How. 495, 540, 541, 542.

[9] Laws of Wisconsin, 1907, Chap. 234.

[10] Vallely v. Northern Fire Ins. Co., *supra*, 355; cf. Taylor v. Sternberg, 293 U. S. 470, 473.

[11] Hines v. Lowrey, 305 U. S. 85, 90, 91; Davis v. Wechsler, 263 U. S. 22, 24.

[12] That a State court before which a proceeding is competently initiated may —by operation of supreme Federal law — lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our Federal system. See Moore v. Dempsey, 261 U. S. 86. Cf. Johnson v. Zerbst, 304 U. S. 458.

The Act expressly provided:

"(n) The filing of a petition . . . shall immediately subject the farmer and all his property, wherever located, . . . to the exclusive jurisdiction of the court, including . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . . or where the sale has not or had not been confirmed," and "In all cases where, at the time of filing the petition, the period of redemption has or had not expired, . . . or where the sale has not or had not been confirmed, . . . the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section"; and

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings *shall not be instituted*, or if instituted at any time prior to the filing of a petition under this section, *shall not be maintained, in any court or otherwise*, against the farmer or his property, *at any time after the filing* of the petition under this section, and *prior to the confirmation* or other disposition of the composition or extension proposal by the court:

". . . .

"(2) *Proceedings for foreclosure of a mortgage on land*, or for cancellation, rescission, or specific performance of an agreement for sale of land *or for recovery of possession of land;*

". . . .

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) *The prohibitions . . . shall apply to all judicial or official proceedings in any court or under the direction of any official*, and *shall apply to all creditors, public or private*, and *to all of the debtor's property, wherever located. All such property shall be* under *the sole jurisdiction and control of the court in bankruptcy*, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act." (Italics supplied.)

Thus Congress repeatedly stated its unequivocal purpose to prohibit—in the absence of consent by the bankruptcy court in which a distressed farmer has a pending petition—a mortgagee or any court from instituting, or maintaining if already instituted, any proceeding against the farmer to sell under mortgage foreclosure, to confirm such a sale, or to dispossess under it.

This congressional purpose is more apparent in the light of the Frazier-Lemke Act's legislative history. Clarifying and altering the sweeping provisions for exclusive Federal jurisdiction in the

original Act,[13] Congress made several important changes in 1935.[14] It was then that subsection (p) was amended so that the prohibitions in subsection (o) of any steps against a farmer-debtor or his property once his petition is filed were made specifically applicable "to all judicial or official proceedings in any court or under the direction of any official, and . . . . to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in Section 75 . . . ."

As stated by the Senate Judiciary Committee in reporting these amendments: " . . . . subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity.

" . . . .

"The amendment to subsection (p) further carries out the amendment to subsection (n), and places the sole jurisdiction of the bankrupt's estate and of his obligations all in the bankruptcy court, without exception."[15]

The Congressional purpose is similarly set out in the House Judiciary Committee's Report: "The amendment to subsection (n) in fact construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now amended in this bill, it becomes clear that it was the intention of Congress when it passed section 75, that the farmer-debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer, prior to confirmation of sale, during the period of redemption, and during a moratorium; and that no proceedings after the filing of the petition should be instituted, or if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise."[16]

Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as

[13] 47 Stat. 1470, sec. 75.

[14] 49 Stat. 942, 943.

[15] Senate Report No. 985, 74th Cong., 1st Sess.

[16] House Report No. 1808, 74th Cong., 1st Sess.

victims of a general economic depression, were without means to engage in formal court litigation. To this end, a referee or Conciliation Commissioner was provided for every county in which fifteen prospective farmer-debtors requested an appointment; and express provision was made that these Commissioners should "upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section."[17] In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense. This was accomplished by granting the bankruptcy court exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts.

The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Walworth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress. Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property—to the extent based upon the court's actions—were all without authority of law. Individual responsibility for such unlawful acts must be decided according to the law of the State. We therefore express no opinion as to other contentions based upon State law and raised by appellees in support of the judgments of the Supreme Court of Wisconsin.

Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer-debtor. The protection of the farmers was left to the farmers themselves or to the Commissioners who might be laymen, and considerations as to whether the issue of jurisdiction

[17] 47 Stat. 1473(q).

was actually contested in the County Court,[18] or whether it could have been contested,[19] are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act.

The judgments in both cases are reversed and the causes are remanded to the Supreme Court of Wisconsin for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[18] Stoll v. Gottlieb, *supra.*

[19] Chicot County Drainage District v. The Baxter State Bank, *supra.*